

## **SUBCHAPTER A : VOLUNTARY CLEANUP PROGRAM SECTION**

### **§333.1. Requirements.**

(a) The requirements of the Voluntary Cleanup Program are found in this Subchapter and in the Texas Solid Waste Disposal Act, Subchapter S, Texas Health and Safety Code, Chapter 361.

(b) The applicant shall submit two copies of all documents, one of which the Voluntary Cleanup Program will file in the agency central records.

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### **§333.2. Definitions.**

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

**Change in land use** - A change in use from a less protective risk classification to a more protective risk classification (e.g., non-residential to residential) or not maintaining an engineering control, remediation system, or post-closure care or non-permanent institutional control as set out in the conditional Certificate.

**Completion** - No more response actions are necessary or the applicant is satisfactorily maintaining the engineering controls, remediation systems, or post-closure care or non-permanent institutional controls are utilized pursuant to the Voluntary Cleanup agreement.

**Exposure assessment model** - A conceptual model of the physical site conditions, contaminants of concern by media, release mechanisms, environmental fate and transport, and potential receptors, and the interaction of each as it relates to site risk. The model identifies the universe of on-site and off-site current and reasonably anticipated future human and environmental exposure pathways and receptors. The purpose of the model is to design and focus site investigations and to assist in the determination of site response action objectives.

**Initiate an enforcement action** - The issuance of a notice of violation by the executive director or referral to the United States Environmental Protection Agency or Attorney General's Office for a possible enforcement action.

**Partial response action** - A response action which is limited to an areal portion of the site and off-site areas, if any, contaminated due to releases which have migrated from the partial response action area onto property owned or controlled by others, inclusive of all media.

**Partial response action area** - The area of the site and off-site within which the partial response action will be conducted in accordance with a plan approved by the executive director.

**Pending enforcement action** - Concerning the remediation of the hazardous substance or contaminant described in the application, a notice of violation has been issued and further administrative, state, or federal enforcement action is under evaluation or an enforcement action is required by federal grant, or the state has incurred unreimbursed costs under the Texas Health and Safety Code, Chapter 361, Subchapter F.

**Response action objectives** - The goals of the response actions, which may include both qualitative and quantitative goals.

**Site** - The property as described in the legal description provided in the voluntary cleanup agreement.

**Site subject to a commission permit or order** - A site or portion of a site concerning which an order or permit has been issued by the commission. These also include hazardous waste facilities, which are operating under interim status.

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### **§333.3. Purpose.**

The purpose of the Voluntary Cleanup Program is to provide incentives to remediate property by removing liability of future landowners and lenders and to provide a process by which voluntary response actions can be completed in a timely and efficient manner.

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### **§333.4. Application to Participate in the Voluntary Cleanup Program (VCP).**

An application submitted to the Voluntary Cleanup Program must be accepted or rejected within 45 days of receipt by the commission. The commission shall not initiate enforcement action on a Voluntary Cleanup Program applicant during the pendency of the agency review of an application for the contamination or release that is the subject of the Voluntary Cleanup agreement or the activity that resulted in the contamination or release.

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### **§333.5. Rejection of Application.**

The executive director may reject an application submitted to the Voluntary Cleanup Program when all costs recoverable under the Texas Solid Waste Disposal Act, Subchapter F, Texas Health and Safety Code, Chapter 361 (State Superfund) for the site are not paid in full to the hazardous and solid waste remediation fee fund by the applicant.

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### **§333.6. Voluntary Cleanup Agreement.**

(a) The voluntary cleanup agreement must be signed by the applicant and the executive director or his representative prior to initiation of any response action being implemented, with the exception of emergency measures which should be coordinated with the appropriate emergency response authorities. However, for response actions initiated or completed prior to the effective date of these rules, the executive director at his discretion may allow sites to enter the Voluntary Cleanup Program. After the effective date of these rules, persons initiating response actions prior to a signed

Voluntary Cleanup Agreement may not enter the Voluntary Cleanup Program. A certificate of completion may not be issued for sites which have received agency approval for response actions completed prior to the effective date of the rule if:

(1) the action did not address all contaminants or contaminated media within the site or partial response action area;

(2) contaminant management practices were initiated or changed since the previous approval date; or

(3) regulatory requirements have changed since the approval date.

(b) In the case of partial response actions, the commission retains the authority to issue an enforcement action regarding releases or contamination not addressed by the partial response action.

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**§333.7. Voluntary Cleanup Work Plans and Reports.**

(a) Voluntary cleanup work plans and reports shall include an investigation of the full nature and extent of contamination in all media unless the person demonstrates to the satisfaction of the executive director that site conditions warrant a focused investigation. This may be demonstrated with an exposure assessment model. The exposure assessment model shall examine all currently discovered and reasonably anticipated future exposure pathways for all contaminants and media of concern. Contaminated media within the investigation area shall be addressed according to the appropriate established technical standards.

(b) The requirements of subsection (a) of this section apply to a partial response action when a contaminant release originating from a partial response action area has migrated onto property owned or controlled by others.

(c) The requirements of subsection (a) of this section apply to all voluntary cleanup response actions with the following exceptions:

(1) when a person demonstrates to the satisfaction of the executive director that the source of contamination is from off-site and the person did not cause the release, the person may address only contamination on the site or the partial response action area within the site according to the appropriate established technical standards.

(2) when a contaminant release is present outside the site or partial response action area, but on property owned or otherwise controlled by the applicant, addressing the areal extent of contamination outside the site or partial response action area is not required under the Voluntary Cleanup Program; however, the contaminant release within the partial response action area shall be addressed according to the appropriate established technical standards.

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**§333.8. Response Action Standards.**

(a) Excepting areal limitations with partial response actions, all media which exceed the health-based and environmental cleanup levels shall be addressed through the appropriate response action and in accordance with the appropriate technical standards based upon the site characteristics and site contaminants.

(b) The applicant shall select a response action for the response action area which will achieve the response action objectives.

(c) State or local permits are not required for removal or remedial action under the Voluntary Cleanup Program. The person conducting the voluntary cleanup shall comply with any federal or state standard, requirement, criterion, or limitation to which the response action would otherwise be subject if a permit were required unless such commission rule requirements are inconsistent with a specific provision of this subchapter.

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**§333.9. Deed Certification.**

The filing of the certificate of completion into the deed record shall satisfy the deed certification requirements of Chapter 334 of this title (relating to Underground and Aboveground Storage Tanks) and Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste) for the areas covered by the certificate of completion. However, if the certificate of completion is not recorded for the off-site properties, the deed certification requirements, if any, of other applicable rules must be met for cleanups which do not achieve residential health-based levels in all media of concern and/or cleanups that include engineering controls, remediation systems, or post-closure care or non-permanent institutional controls.

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**§333.10. Certificate of Completion.**

(a) If reports acceptable to the executive director that are submitted under this subchapter demonstrate that no further action is required to protect human health and the environment, the executive director shall certify such facts by issuing the person a final certificate of completion. If the applicant is satisfactorily maintaining the engineering controls, remediation systems, or post-closure care, or if non-permanent institutional controls are utilized pursuant to an agreement, the executive director shall certify such facts by issuing the applicant a conditional certificate of completion. The executive director may authorize an applicant to conduct a phased response action only when, in the executive director's evaluation, the schedule is reasonable.

(b) For partial response actions, the certificate of completion shall pertain only to the partial response action area and shall include a legal description of that area.

(c) For sites approved prior to the effective date of this rule, agency will issue a certificate of completion for sites only if currently appropriate response actions for all contaminants within the area described in the certificate of completion have been completed.

(d) The executive director may allow the applicant to file the copy of the certificate of completion into the site deed record on the executive director's behalf if the applicant provides subsequent documentation of the filing. The applicant must file the copy of the certificate of completion prior to the sale or transfer of the property, but not later than 60 days after the date of issuance of the certificate of completion.

(e) The executive director may allow the applicant to file a statement in the deed records stating that the certificate of completion supersedes prior deed certification requirements.

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**§333.11. Public Notice.**

Where contamination is located on property owned by another person or on property where an interest such as a fee ownership, leasehold, easement, or right-of-way is held by another person, the applicant must provide notification to all such property owners and interest holders. At a minimum, applicants shall use the notification form provided by the executive director, but may include additional language as desired.

(1) Notice to property owners and interest holders, who more likely than not due to migration off-site have concentrations of contaminants on their property at or below the residential health-based levels for any media, shall occur within two weeks after agency approval of a report describing the nature and extent of contamination at the site, and prior to initiation of response actions. However, notification will not be required when concentrations are at or below background. The notice will indicate that the contaminants are at concentrations protective of any future land use and that the TNRCC will not require further investigation or remediation off-site. The notice shall also state the availability for inspection and copying of reports in the commission files concerning the site. Under these circumstances, the applicant may provide notice in local newspapers, block advertisements, letters to individual households and businesses, or other personal contacts. The executive director shall require verification that such activity has been completed.

(2) Direct notice is required, in the form of letters to affected individual households, businesses, and other interest holders, when concentrations of contaminants exceeding residential health-based levels have migrated off-site. The notice shall state that concentrations of contaminants exceed the residential health-based levels on the off-site property. The notice shall also state the availability for inspection and copying of reports in the commission files concerning the site. The applicant shall submit copies of the notice letter delivered with the recipient's signature and date of delivery to the agency within two weeks after initial discovery of the off-site contamination or two

weeks after the effective date of the VCP agreement. If initial notification attempts are unsuccessful, the applicant shall repeat the process monthly until all affected parties are notified or at least four failed attempts are documented to the satisfaction of the executive director. Notice to governmental entities shall be delivered to the chief clerk or city secretary.

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